Decision **PROPOSED DECISION OF ALJ LONG** (Mailed 8 / 9 / 2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA EDISON (U 338-E) for Authorization to Recover Costs Recorded in the Catastrophic Events Memorandum Account.	Application 04-12-003 (Filed December 2, 2004)

(See Appendix B for a list of appearances.)

OPINION GRANTING SOUTHERN CALIFORNIA EDISON COMPANY RECOVERY OF COSTS ASSOCIATED WITH THE 2003 FIRESTORMS

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OPINION GRANTING SOUTHERN CALIFORNIA EDISON COMPANY RECOVERY OF COSTS ASSOCIATED WITH THE 2003 FIRESTORMS

I. Summary

This decision adopts the settlement between Southern California Edison Company (Edison) and the Office of Ratepayer Advocates (ORA) filed on June 22, 2005. Under the terms of the settlement, Edison may recover $7.691 million of incremental operating and maintenance costs and $19.990 million of incremental capital additions. Edison will recover the resulting revenue requirement by transferring the balance in its Catastrophic Event Memorandum Account (CEMA) to the Distribution Subaccount of its Base Revenue Requirement Balancing Account following a final decision in its pending 2006 general rate case, Application (A.) 04-12-014. The proceeding is closed.

II. Background

In October and November of 2003, California experienced some of the most destructive wildfires in the nation's history (Firestorms). As a result of these devastating fires, Edison suffered damage to portions of its infrastructure. This damage, according to Edison, required it to spend tens of millions of dollars to restore service to customers, many of whom were without power for many days. In Resolution E-3238,[1] the Commission authorized Edison to establish a CEMA to record costs associated with: (1) restoring utility service to its customers; (2) repairing, replacing, or restoring damaged utility facilities; and (3) complying with governmental agency orders from declared disasters.

[1] In Advice Letter 912-E, Edison established its Catastrophic Event Memorandum Account (CEMA) in accordance with Resolution E-3238, effective September 6, 1991.

In its application, Edison asks the Commission to: (1) find reasonable the $7.8 million of incremental Operating & Maintenance Expenses and the $28.2 million of incremental capital expenditures[2] Edison incurred in restoring service and rebuilding its fire-damaged infrastructure; and (2) authorize the transfer of the recorded December 31, 2005 CEMA balance related to the Firestorms to the Base Revenue Requirement Balancing Account for recovery in rates.

III. Procedural History

Notice of the Application appeared in the Commission's daily calendar. Resolution ALJ 176-3144, dated December 16, 2004, preliminarily categorized the application as ratesetting and determined that hearings were necessary. ORA, the Commission's in-house consumer advocacy arm, filed a timely protest. On January 14, 2005, the Administrative Law Judge (ALJ) required Edison to serve supplemental testimony.[3] On February 8, 2005, Edison served the requested supplemental testimony (Ex. 2). By the same ruling, the ALJ directed parties to meet and confer on procedural and other matters in advance of a prehearing conference. (Rule 49 of the Commission's Rules of Practice and Procedure (Rules).) On February 14, 2005, Applicant and ORA served Prehearing Conference Statements. On February 17, 2005, a prehearing conference was held to determine parties, identify issues, consider the schedule, and address other matters as necessary to proceed with this application.

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[2] Ex. 2, attached Exhibit III-2 and Exhibit III-1, respectively.

[3] Administrative Law Judge's Ruling Requiring Southern California Edison Company to Supplement its Application; Establishing Related Filing Deadlines; and Scheduling a Prehearing Conference.

On February 25, 2005 *The Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* (Scoping Memo) designated the assigned ALJ as the principal hearing officer as defined in Rule 5(l). It also determined that this is a ratesetting proceeding. Pursuant to Rule 5(k)(2), the principal hearing officer is the presiding officer for this proceeding. Accordingly, the proposed decision of the ALJ is to be issued pursuant to Rule 8.1(b), which requires issuance of a proposed decision by the presiding officer.

The scope of this proceeding was identified as:

- Reasonableness of Edison's overall management of the restoration of service in a safe and timely manner, consistent with worker safety, public need, and equitable treatment of customers.
- Reasonableness of the gross amount of Operating & Maintenance Expenses recorded in the Firestorms Account.
- Reasonableness of the gross amount of Capital Expenditures recorded in the Firestorms Account.
- Reasonableness of Edison's determination of incremental costs as defined by Resolution E-3238.
- Reasonableness of the forecast 2005 ongoing capital-related costs and electric distribution revenue requirements. This includes an analysis of any 2005 incremental or avoided expense or capital expenditure impacts on Edison's subsequent operations as a result of service restoration after the Firestorms.
- Allocation of all costs between the jurisdictions of the Federal Energy Regulatory Commission and the California Public Utilities Commission.
- The reasonableness and timing of Edison's proposed ratemaking treatment of any authorized recovery of the Firestorms Account balances.

IV. Hearing and Record

Testimony was served by ORA on May 23, 2005. Evidentiary hearings were conducted on June 23, 2005, and five exhibits were received in evidence. Also at that time, pursuant to Rule 51 *et seq.*, Edison and ORA provided copies of a motion for the adoption of a settlement agreement[4] served on June 22, 2005.[5] Pursuant to Rule 51.4, a 30-day comment period began on June 22, 2005. No comments were filed.

V. The Burden of Proof

There is a natural litigation advantage enjoyed by utilities,[6] and the fact that we must rely in significant part on their experts, reinforces the importance of placing the burden of proof in ratemaking applications on the applicant utilities. Edison has the sole obligation to provide a convincing and sufficient showing to meet the burden of proof, and any active participation of other parties can never change that obligation.

It is the utility, not the staff or interested parties that faces the burden of showing with clear and convincing evidence that its course of action was reasonable and therefore entitled to rate recovery. As discussed below we find that in this proceeding Edison has met its burden.

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[4] *Motion of Southern California Edison Company (U-338-E) [(Edison)] and Office of Ratepayer Advocates [(ORA)] for Adoption of Settlement Agreement.* The Settlement Agreement is attached as Appendix A.

[5] Pursuant to Rule 51.1(b), Edison had provided notice of two settlement conferences; no party except ORA participated.

[6] This advantage is discussed at length in Decision (D.) 00-02-046, a recent rate case for Pacific Gas and Electric Company.

A. The Standard for Prudent Managerial Action

The Commission's standard[7] in a reasonableness review of managerial action is settled. In a reasonableness review of the 2003 Firestorm, and consistent with previous statements of the standard, Edison should be held to the following standard:

> Utilities are held to a standard of reasonableness based upon the facts that are known or should be known at the time. While this reasonableness standard can be clarified through the adoption of guidelines, the utilities should be aware that guidelines are only advisory in nature and do not relieve the utility of its burden to show that its actions were reasonable in light of circumstances existent at the time. Whatever guidelines are in place, the utility always will be required to demonstrate that its actions are reasonable through clear and convincing evidence.[8]

Thus, the reasonableness of a particular management action depends on what the utility knew or should have known at the time that the managerial decision was made, not how the decision holds up in light of future developments. The Commission has affirmed this standard of review in numerous decisions over many years.

Although the utility need not show that it has undertaken the optimal act, it must show that its course of action was reasonable and that the utility took care in making its decision.

B. Standard for Approval of a Settlement

Rule 51.1(a) provides:

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[7] D.02-08-064 (2002 Cal. PUC LEXIS 534; 219 P.U.R.4th 421).

[8] D.88-03-036 (1988 Cal. PUC LEXIS 155,*7; 27 CPUC 2d 525).

> Parties to a Commission proceeding may stipulate to the resolution of any issue of law or fact material to the proceeding, or may settle on a mutually acceptable outcome to the proceeding, with or without resolving material issues. Resolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.

Rule 51.1(e) has, as a further requirement:

> The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest. (Emphasis added.)

VI. Reasonableness Issues Raised by ORA

ORA served testimony (Ex. 5) indicating an audit had been performed in conformance with the scope of the proceeding to determine whether the Firestorm costs incurred by Edison and included in the CEMA were in fact incremental to existing allowances in rates and were reasonably incurred. ORA identified three major exceptions:

1. A $3.5 million reduction to capital plant additions based primarily on SCE's understatement of cost of removal and overstatement of capital plant additions; (Ex. 5, p. 9.)
2. A $427,916 reduction ($270,939 to capital plant additions and $156,977 to O&M expenses) based on SCE's inclusion of "normal" overtime labor costs; (Ex. 5, p. 12.) and
3. A $101,700 reduction to O&M expenses related to employee expenses. (Ex. 5, p. 12.)

In rebuttal testimony, Edison conceded that capital plant additions were erroneously overstated by $3.5 million. (Ex. 3, p. 3.) Before entering into settlement negotiations, Edison continued to dispute the overtime labor cost adjustment and the employee expense adjustment. Settlement discussions began

after the concession on capital costs and thus the dispute was the remaining $529,616 included in ORA's second and third proposed adjustment.

VII. Settlement

No other party actively participated in this proceeding and the June 22, 2005 settlement between Edison and ORA is therefore a settlement involving all active parties. The settlement is attached to this decision as Appendix A.

Edison and ORA agreed to make these further reductions:[9]

1. A $270,939 reduction to the capital plant additions used to calculate the incremental revenue requirement; and
2. A $156,977 reduction to the O&M expenses included in the incremental revenue requirement calculation.

In effect, the only settlement concession by ORA was to remove its objections to the $101,700 in employee expenses. Edison and ORA further agreed to transfer the balance in its CEMA to the Distribution Subaccount of Edison's Base Revenue Requirement Balancing Account[10] following a final decision in its pending 2006 general rate case, A.04-12-014.

As already noted, Rule 51.1(e) requires a settlement to be "reasonable in light of the whole record, consistent with law, and in the public interest."

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[9] Settlement, p. 4.

[10] "The purpose of the Base Revenue Requirement Balancing Account (BRRBA) is to record: 1) the difference between SCE's authorized distribution and generation base revenue requirements and recorded revenues from authorized distribution and generation rates; and 2) other amounts as authorized by the Commission. The BRRBA is established in accordance with D.04-07-022." (Edison tariff sheet 38278-E, effective January 1, 2005.)

A. Reasonable in Light of the Whole Record

We have reviewed the evidence in the record, considered the scope and thoroughness of ORA's review, and Edison's compliance with the requirements of the Commission's CEMA process. The costs recoverable in the Firestorms' Account were shown to be incurred solely because of the system damage sustained in the fires. The costs, as adjusted in the settlement agreement, are incremental to the costs already included in Edison's retail rates. We find that Edison appropriately complied with the specific requirements imposed on an application to recover the costs of a catastrophic event. We find that in fact the Firestorms met the requirements of Resolution E-3238. In its testimony and responses to ORA's audit, Edison provided sufficient information to meet its burden of proof. We find, based on our review of ORA's testimony, that ORA performed sufficient competent analysis,[11] which is a necessary precondition, to have an informed basis for negotiating a settlement.

[11] "ORA's examination emphasized verification of SCE's documented support for the Firestorm related costs and expenses that were booked to the CEMA accounts and ORA evaluated whether the costs and expenses were (1) incremental; and (2) reasonable. ORA reviewed SCE's accounting system and CEMA cost tracking procedures, including internal manuals and advice memorandum. … ORA examined the internal reviews of SCE Firestorm CEMA costs that were conducted by the Transmission and Distribution Business Unit—Internal Controls (TDBU Internal Controls) and by SCE internal auditors." (Ex. 5, pp. 3 - 4.)

B. Consistent with Law

Nothing in the settlement is inconsistent with the law, and the settlement process was consistent with Rule 51 *et seq.* The Firestorms also met the CEMA requirement that the event be declared a disaster.[12]

C. In the Public Interest

There was no guarantee that litigation of the issues raised by ORA would have resulted in an adjustment to Edison's application as large as the settlement accepted by Edison. The settlement saved time and resources, and achieved a result within the range of reasonable litigation outcomes.

D. Uncontested Settlement

A further standard is articulated in San Diego Gas & Electric, 46 CPUC 2d 538 (1992), and applies to all-party settlements. As a precondition to approving such a settlement, the Commission must be satisfied that:

1. The proposed all-party settlement commands the unanimous sponsorship of all active parties to the proceeding.
2. The sponsoring parties are fairly representative of the affected interests.
3. No settlement term contravenes statutory provisions or prior Commission decisions.
4. Settlement documentation provides the Commission with sufficient information to permit it to discharge its future

[12] "Governor Gray Davis to issue a State of Emergency Proclamation (Emergency Proclamation) on October 25, 2003 for the Counties of San Bernardino and Ventura, a second Emergency Proclamation on October 26, 2003 for the Counties of Los Angeles and San Diego, and a third Emergency Proclamation on October 28, 2003 for the County of Riverside. On October 27, 2003, President George W. Bush declared a major disaster existed in the State of California and ordered Federal aid to supplement State and local recovery efforts." (Ex. 1, p. 8.)

> regulatory obligations with respect to the parties and their interests.

In this instance we can answer all four requirements in the affirmative: after repeated solicitations, no other party emerged; ORA is charged with representing the long-term best interest of all ratepayers; the settlement does not contravene any statutes or prior decisions; and, the settlement is sufficiently detailed for implementation.

VIII. Assignment of Proceedings

Susan P. Kennedy is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

IX. Comment on Proposed Decision

The 30-day waiting period mandated by Pub. Util. Code § 311(d) may be reduced or waived by the Commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The parties have stipulated to waive this period and will not file comments on the Proposed Decision as allowed by Rules 77.2 et seq.

Findings of Fact

1. Edison suffered damage to portions of its infrastructure during the October and November 2003 Firestorms. This damage was significant and the firestorms were properly designated a disaster eligible for CEMA recovery.

2. Edison complied with the requirements for the CEMA as adopted in Resolution E-3238.

3. ORA was the only other active party to the proceeding. After ORA conducted a competent evaluation of the application, ORA and Edison entered into a settlement agreement incorporating all but one of ORA's audit exceptions.

4. The settlement allows Edison to recover its reasonably incurred costs to repair the Firestorm damage that are within the range of reasonable litigation outcomes.

5. The settlement is uncontested.

Conclusions of Law

1. Rule 51 *et seq.,* should be used to review the settlement agreement. The settlement meets the criteria of an uncontested settlement under Rule 51(f) and *San Diego Gas & Electric* 46 CPUC 2d 538 (1992).

2. The settlement between Edison and ORA resolves all issues in this proceeding and it is reasonable in light of the whole record, consistent with law, and in the public interest. It should therefore be adopted as set forth in the following order.

3. It is reasonable for Edison to transfer the balance in its CEMA to the Distribution Subaccount of its Base Revenue Requirement Balancing Account following a final decision in its pending 2006 general rate case, A.04-12-014.

4. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The June 22, 2005, *Motion of Southern California Edison Company (U-338-E) [(Edison)] and Office of Ratepayer Advocates [(ORA)] for Adoption of Settlement Agreement* is granted as set forth herein.

2. Edison is entitled to recover incremental operating and maintenance expenses (O&M) totaling $7.691 million and incremental capital additions totaling $19.990 million. Edison shall record the resulting revenue requirement

of $11.8 million, as of April 2005, in the Firestorms' Catastrophic Event Memorandum Account (CEMA) and continue to accrue interest on the balance.

3. In conformance with the attached settlement agreement, Edison shall transfer the balance in its CEMA to the Distribution Subaccount of its Base Revenue Requirement Balancing Account following a final decision in its pending 2006 general rate case, Application 04-12-014.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Long Agenda Dec. Appendix A

Long Agenda Dec. Appendix B